

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

* * *

PATRICK MCCAFFREY,

Plaintiff,

v.

C/O MARTINEZ, *et al.*,

Defendants.

Case No. 3:22-cv-00110-MMD-CSD

ORDER

On May 25, 2022, this Court issued a screening order dismissing with leave to amend Plaintiff's Eighth Amendment conditions-of-confinement claim, as well as his claims under the Americans with Disabilities Act ("ADA") and the Rehabilitation Act ("RA"). (ECF No. 3 at 11.) The Court also dismissed without prejudice but without leave to amend Plaintiff's state-law negligence claim. (*Id.*) Finally, the Court denied without prejudice Plaintiff's motion for appointment of counsel. (*Id.*) On June 8, 2022, Plaintiff moved for reconsideration of the screening order and for an extension of time to file his amended complaint. (ECF Nos. 5, 6.)

A motion to reconsider must set forth "some valid reason why the court should reconsider its prior decision" and set "forth facts or law of a strongly convincing nature to persuade the court to reverse its prior decision." *Frasure v. United States*, 256 F. Supp. 2d 1180, 1183 (D. Nev. 2003). Reconsideration is appropriate if this Court "(1) is presented with newly discovered evidence, (2) committed clear error or the initial decision was manifestly unjust, or (3) if there is an intervening change in controlling law." *Sch. Dist. No. 1J v. Acands, Inc.*, 5 F.3d 1255, 1263 (9th Cir. 1993). "A motion for reconsideration is not an avenue to re-litigate the same issues and arguments upon which the court

1 already has ruled.” *Brown v. Kinross Gold, U.S.A.*, 378 F. Supp. 2d 1280, 1288 (D. Nev.
2 2005).

3 The Court denies Plaintiff’s motion for reconsideration. Plaintiff argues that the
4 Court erred in dismissing his claims under the Eighth Amendment, the ADA, and the RA
5 because it “mistakenly believed [he] was required to allege facts demonstrating
6 Defendants had actual knowledge of his individual disability.” (ECF No. 6 at 8.) In fact,
7 the Court dismissed the Eighth Amendment claim because Plaintiff failed “to allege that
8 any Defendant was aware of the dangerous condition at issue here—the icy, unsalted
9 portion of the walkway” on which Plaintiff slipped and fell. (ECF No. 3 at 6.) Without such
10 allegations, the Court could not infer that any Defendant knew of and disregarded “an
11 excessive risk to [Plaintiff’s] health or safety,” as is required to state an Eighth Amendment
12 claim. *Farmer v. Brennan*, 511 U.S. 825, 837 (1994). The Court dismissed the ADA and
13 RA claims because Plaintiff failed to allege that “he ever requested the accommodation
14 he now proposes—the delivery of meals to physically disabled inmates such as himself.”
15 (ECF No. 3 at 8.) Plaintiff has identified no clear error in these conclusions, which did not
16 rest on Plaintiff’s failure to allege that Defendants knew he was disabled.¹

17 Plaintiff also seeks reconsideration of the Court’s denial without prejudice of his
18 motion for appointment of counsel. (ECF No. 6 at 9-11.) Plaintiff has not shown that the
19 Court committed clear error in finding that no exceptional circumstances warranted the
20 appointment of counsel at this time. Plaintiff may renew his motion for appointment of
21 counsel when he files his amended complaint.

22 Finally, Plaintiff separately moves for an extension of time to file his amended
23 complaint. (ECF No. 5.) He seeks leave to file his amended complaint either thirty days
24 from the date his motion for reconsideration is decided or by July 25, 2022, “whichever
25

26
27 ¹Plaintiff alternatively argues that *Farmer* should be “overturned,” because the
28 requirement of showing that a prison official was subjectively aware of a risk of harm
“violates the Eighth Amendment.” (ECF No. 6 at 8-9.) This argument does not warrant
reconsideration because the Court is bound by Supreme Court precedent, including
Farmer.

1 comes later.” (*Id.*) The Court grants the motion for an extension of time. Plaintiff must file
2 his amended complaint on or before July 25, 2022.

3 It is therefore ordered that Plaintiff’s motion for reconsideration (ECF No. 6) is
4 denied.

5 It is further ordered that Plaintiff’s motion for an extension of time (ECF No. 5) is
6 granted. Plaintiff must file his amended complaint on or before July 25, 2022.

7 DATED THIS 9th Day of June 2022.

8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28



MIRANDA M. DU
CHIEF UNITED STATES DISTRICT JUDGE